

# BUSINESS COURT CIVIL COVER SHEET

Clark  
County, Nevada  
Case No. \_\_\_\_\_  
*(Assigned by Clerk's Office)*

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## I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): QUEST ACADEMY PREPARATORY EDUCATION, a Nevada State funded charter school, by and through its duly appointed Receiver, Joshua M. Kern 4660, 4656 and 4624 N. Rancho Drive, Las Vegas, Nevada 89130	Defendant(s) (name/address/phone): LAVAR ANTHONY WINSOR, an individual; TOWER DISTRIBUTION CENTER, LLC, a Nevada limited liability company; and DOES I through XX
Attorney (name/address/phone): Richard F. Holley/Ogonna M. Brown, F. Thomas Edwards, Esq. HOLLEY DRIGGS WALCH FINE WRAY PUZEY & THOMPSON 400 South Fourth Street, Third Floor, Las Vegas, Nevada 89101 (702) 791-0308	Attorney (name/address/phone):    

## II. Nature of Controversy *(Please check the applicable boxes for both the civil case type and business court case type)*

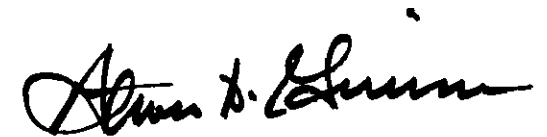
☐ Arbitration Requested

Civil Case Filing Types		Business Court Filing Types		
<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Torts</b> <b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort	<b>CLARK COUNTY BUSINESS COURT</b> <input type="checkbox"/> NRS Chapters 78-89 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Mergers (NRS 92A) <input type="checkbox"/> Uniform Commercial Code (NRS 104) <input type="checkbox"/> Purchase/Sale of Stock, Assets, or Real Estate <input type="checkbox"/> Trademark or Trade Name (NRS 600) <input type="checkbox"/> Enhanced Case Management <input checked="" type="checkbox"/> Other Business Court Matters		
<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Civil Writs</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	<b>WASHOE COUNTY BUSINESS COURT</b> <input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Investments (NRS 104 Art.8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademark/Trade Name (NRS 600) <input type="checkbox"/> Trade Secrets (NRS 600A) <input type="checkbox"/> Enhanced Case Management <input type="checkbox"/> Other Business Court Matters		
<b>Judicial Review/Appeal/Other Civil Filing</b> <table style="width: 100%;"> <tr> <td style="width: 50%;"> <b>Judicial Review</b>  <input type="checkbox"/> Foreclosure Mediation Case  <b>Appeal Other</b>  <input type="checkbox"/> Appeal from Lower Court                         </td> <td style="width: 50%;"> <b>Other Civil Filing</b>  <input type="checkbox"/> Foreign Judgment  <input type="checkbox"/> Other Civil Matters                         </td> </tr> </table>		<b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court	<b>Other Civil Filing</b> <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	
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August 10, 2016

Date

Signature of initiating party or representative



CLERK OF THE COURT

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*Attorneys for Plaintiff Quest Academy Preparatory Education,  
by and through its duly appointed Receiver, Joshua M. Kern*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

QUEST ACADEMY PREPARATORY  
EDUCATION, a Nevada State funded charter  
school, by and through its duly appointed  
Receiver, Joshua M. Kern,

Plaintiff,

v.

LAVAR ANTHONY WINSOR, an individual;  
TOWER DISTRIBUTION CENTER, LLC, a  
Nevada limited liability company; and DOES I  
through XX,

Defendants.

Case No.: A - 1 6 - 7 4 1 5 2 5 - B  
Dept. No.: XV

**COMPLAINT**

**BUSINESS COURT REQUESTED**

**Exempt from Arbitration:  
EXTRAORDINARY RELIEF  
REQUESTED, DECLARATORY RELIEF  
AND INJUNCTIVE RELIEF  
REQUESTED**

Plaintiff QUEST ACADEMY PREPARATORY EDUCATION ("Quest"), a Nevada  
State funded charter school, by and through its duly appointed Receiver, Joshua M. Kern, and  
undersigned counsel of the law firm Holley Driggs Walch Fine Wray Puzey & Thompson,  
hereby submits the following Complaint against Defendants and complains and alleges as  
follows:

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**NATURE OF ACTION**

Plaintiff brings this action arising from a dispute involving a Lease for the premises located at 4660, 4656 and 4624 N. Rancho Drive, Las Vegas, Nevada 89130 (“Torrey Pines Lease”) and efforts by the landlord to wrongfully evict Quest and 715 school children from the Torrey Pines Campus (defined below).<sup>1</sup>

**PARTIES**

1. Plaintiff Quest is, and at all relevant times was, a State funded charter school authorized by the State Public Charter School Authority (“SPCSA”) to operate four campuses in the greater Las Vegas area, including the elementary School at the Torrey Pines Campus.

2. Joshua Kern (the “Receiver”) is, and at all times relevant herein was, a receiver appointed by the SPCSA or alternatively, the (“Authority”) under the laws of the State of Nevada over Quest.

3. Upon information and belief, Defendant Lavar Anthony Winsor (“Winsor”) is and at all relevant times was an individual conducting business in Clark County, Nevada.

4. Upon information and belief, Defendant Tower Distribution Center, LLC, a Nevada limited-liability company (the “Tower”), is and at all relevant times was conducting business in Clark County, Nevada and was the original landlord for the Torrey Pines Campus.<sup>2</sup>

5. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendants herein designated as Does I through XX, inclusive, are not known to Plaintiff at this time and are therefore named as fictitious defendants. Plaintiff will seek to amend this Complaint to allege the true names and capacities of Does I through XX when and as ascertained.

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<sup>1</sup> Although the Torrey Pines Lease references 4701 N. Torrey Pines, it appears that reference was in error.

<sup>2</sup> At this point it is difficult to determine who the actual landlord was at the various points in time. Three different 5-Day Notices have been served on Quest identifying two different landlords and three different real properties. For this reason, the landlord is identified at times alternatively as landlord, Winsor and/or Tower.

**JURISDICTION AND VENUE**

6. The Court has subject matter jurisdiction over this action pursuant to the Nevada Constitution and Nevada Revised Statutes (“NRS”), including, but not limited to, NRS 14.065(1), NRS Chapter 281, and Chapter 386 of the Nevada Administrative Code (“NAC”).

7. The Court has personal jurisdiction over the Defendants because the Defendants regularly conduct business in Clark County, Nevada.

8. Venue in the Eighth Judicial District Court, Clark County, for the State of Nevada is proper pursuant to NRS 13.010(1) and/or NRS 13.040, because Quest is a Nevada State funded charter school located and operating in Clark County, Nevada.

**GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF**

9. Plaintiff hereby incorporates each and every allegation contained in the previous paragraphs as though fully set forth below.

**BACKGROUND REGARDING QUEST ACADEMY**

10. Quest is a Nevada State funded charter school located in Las Vegas, Nevada metropolitan area, organized, operated and governed pursuant to Chapter 386 of the Nevada Administrative Code, which governs Local Administrative Organization relating to Charter Schools, and Title 23 of the Nevada Revised Statutes, governing Public Officers and Employees under Nevada Revised Statutes under Chapter 281.

11. On July 16, 2008, the SPCSA<sup>3</sup> approved the proposed charter application for Quest. The term of the Charter Contract was for a period of six (6) years. On April 3, 2014, Quest and the SPCSA entered into a renewed Charter Contract (the “2014 Charter Contract”) with Quest, effective from July 1, 2014, and terminating on June 30, 2020, unless earlier terminated as provided in the 2014 Charter Contract.

12. At all relevant times, Quest operated its charter school at four (4) campuses in the Las Vegas metropolitan area consisting of: (i) the Alexander Campus located at 7550 West Alexander, Las Vegas, Nevada 89149 servicing kindergarten; (ii) the Bridger Campus located at

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<sup>3</sup> The SPCSA was authorized by the Legislature to sponsor charter schools pursuant to NRS 386.509, and on July 16, 2008, the SPCSA approved Quest’s proposed charter application.

1 1300 East Bridger, Las Vegas, Nevada 89101 servicing kindergarten through fifth grade; (iii) the  
2 Roberson Campus located at 7485 Azure Drive, Las Vegas, Nevada 89130 servicing eighth  
3 through twelfth grades<sup>4</sup>; and (iv) the Torrey Pines Campus located at 4660, 4656 and 4624 N.  
4 Rancho Drive, Las Vegas, Nevada 89130 servicing kindergarten through seventh grades.<sup>5</sup>

5 13. Pursuant to that certain resolution and agreement entered into between Quest and  
6 the SPCSA Board as a condition to granting an amendment request on August 25, 2015, the  
7 Director of the SPCSA, acting on delegated authority from the SPCSA Board, appointed the  
8 Receiver as the receiver and manager of the assets and operations of Quest (“Appointment  
9 Letter”), effective October 26, 2015, with full legal authority over all aspects of school finance,  
10 operations, and academics, all records of any kind relating to any of the foregoing, all funds and  
11 proceeds relating to any of the foregoing (including insurance, general intangibles and other  
12 accounts proceeds) of Quest (the “Receivership Property”).

13 14. Upon information and belief, Quest is the first charter school over which the  
14 SPCSA has ever appointed a receiver in the State of Nevada. The receivership is an unusual and  
15 drastic step for the SPCSA, and a very significant event, and not an action taken lightly by the  
16 SPCSA. This action was taken because of deep-seated concerns over the operations of Quest by  
17 its prior board and officers.

18 15. Upon information and belief, the Receiver’s appointment was based in part on  
19 preliminary findings from an independent forensic investigation conducted by Deloitte and  
20 commissioned by the SPCSA regarding Quest operations that revealed serious concerns  
21 involving mismanagement, potential conflicts of interest, insider dealing, and breach of fiduciary  
22 duty issues in connection with a number of areas. Upon being appointed as the Receiver over the  
23 assets and operations of Quest, the Receiver has been tasked with, among other things, reviewing  
24 and evaluating the business and operating practices of Quest; reviewing contracts between Quest

25 <sup>4</sup> The Roberson Campus was closed by the Receiver on or about June 14, 2016, as discussed in  
26 more detail below.

27 <sup>5</sup> As discussed below, the Torrey Pines Campus is the most important Quest campus. If Quest is  
28 evicted from the Torrey Pines Campus, the entire school will fail, and nearly 920 students will be  
displaced and almost 100 staff and faculty will lose their jobs. Quest also services a considerable  
number of special needs children at its campuses.

1 and third parties; identifying assets and liabilities of the charter school, and if possible,  
2 rehabilitating Quest in order to keep Quest as an operating charter school. The lease and related  
3 papers concerning the Torrey Pines Campus is one of the contracts that the Receiver has  
4 reviewed and investigated.

5 16. One common denominator in many of the exploitive transactions entered into by  
6 Quest was the involvement of the Chartered for Excellence Foundation (“Foundation”). Such is  
7 the case with the Torrey Pines Lease. The Torrey Pines Lease was clearly not an arm’s length  
8 transaction.

9 17. Upon information and belief, Winsor became a member of the Foundation Board  
10 on or about November 2014 and was a Foundation Board member and Vice-President during the  
11 time that the Torrey Pines Lease was negotiated between Quest and the landlord in early 2015  
12 and later when the 1<sup>st</sup> Addendum was negotiated in mid-2015. The Receiver very recently  
13 discovered that the Foundation was voluntarily dissolved on April 30, 2016. Winsor signed the  
14 2016 Resolutions of the Board of Trustees of Chartered for Excellence for the dissolution of the  
15 Foundation, as Trustee and Vice President of the Foundation. Upon information and belief,  
16 Winsor negotiated the terms of the Torrey Pines Lease with Quest. The initial landlord for the  
17 Torrey Pines Campus was Tower. Upon information and belief, Winsor was at all relevant times  
18 the manager and a member of Tower. Winsor signed the Torrey Pines Lease on behalf of Tower.  
19 According to the 1<sup>st</sup> Addendum to the Torrey Pines Lease, Winsor became the assignee of Tower  
20 for the Torrey Pines Lease no later than July 2015. Moreover, according to one of the 5-Day  
21 Notices, Winsor then assigned the Torrey Pines Lease back to Tower.

22 18. Upon information and belief, Winsor was also at all relevant times either the  
23 manager and/or the owner of Dynamic Property Holdings, LLC (“Dynamic”), the landlord with  
24 whom Quest entered into a commercial lease for the Roberson Campus.

25 **FOUNDATION’S RELATIONSHIP WITH QUEST AND**  
26 **OVERLAPPING BOARD MEMBERS AND OFFICERS**

27 19. The Foundation is, and at all relevant times was, a Nevada non-profit foundation  
28 incorporated on January 31, 2014, and created by David Olive (“Olive”), then governing board

1 president of Quest, as a non-profit foundation purportedly for the benefit of Quest. Upon  
2 information and belief, Quest was in fact the only charter school affiliated with the Foundation.

3 20. Upon information and belief, all individuals that were part of the Foundation  
4 when it was incorporated on January 31, 2014, were also associated with Quest, either as a  
5 governing board member or through employment.

6 21. When the Foundation was incorporated on January 31, 2014, the Nevada  
7 Secretary of State identified the registered agent for the Foundation as Anthony Barney  
8 (“Barney”).

9 22. The original officers and directors of the Foundation when it was incorporated on  
10 January 31, 2014, as reflected in the Nevada Secretary of State, included Olive as President and  
11 Director, Kelli Miller (“Miller”) as Secretary, Debra Roberson (“Roberson”) as Treasurer, and  
12 Barney as Director.

13 23. At the time of the Foundation’s incorporation, Olive, Miller, Roberson and  
14 Barney were also affiliated with Quest, in that they were all either employees or board members  
15 of Quest. Specifically, on February 1, 2013, Roberson signed an Employment Contract with  
16 Quest to serve as Interim Principal; she became the permanent Principal on May 6, 2013, with a  
17 2-year contract voted by the Governing Board on June 18, 2013, and later served as the  
18 superintendent of Quest. Olive was the Governing Board President of Quest and Miller was the  
19 Director of Innovation and Grants for Quest. Barney likewise served on Quest’s Governing  
20 Board.

21 24. Upon information and belief, in February 2015, Barney resigned from Quest’s  
22 Governing Board, but was retained as the Foundation’s paid attorney on or about May 27, 2015.

23 25. Roberson resigned from the Foundation’s Board of Directors in June 2015.

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29. Pursuant to section 5 of the Agreement, the compensation to be paid by Quest to the Foundation was to be equal to twenty percent (20%) of the gross amount of any services or goods obtained on behalf of Quest.

<sup>6</sup> The “Starting Date” under Section 1.3 of the Agreement was March 1, 2014, notwithstanding that the Agreement was executed over two months later on May 17, 2014.



31. Quest essentially settled for the Torrey Pines Campus, which is in a less than ideal location for a charter school. The campus is in an industrial park located in an industrial section of town and is surrounded by such businesses as the Santa Fe Casino, a farm supply and tack store, Big Dog's Draft House (a bar) and a boarded up adult book store. If anything, the location warrants a further reduction in the rental rate, not a premium as first charged by Tower and then by Winsor.

32. The Torrey Pines Lease is dated March 27, 2014, and titled a Triple Net Real Estate Lease. The original term of the Torrey Pines Lease is for approximately sixteen (16) years ending on June 31, 2030. The Base Rent during year one of the Lease Term (9/1/2015 to 7/31/2016) was Thirty-Five Thousand Dollars (\$35,000.00) per month. During year two of the Lease Term (8/1/2016 to 7/31/2017), the Base Rent is Thirty-Six Thousand, Fifty Dollars (\$36,050.00) per month. The Base Rent continues to increase at the rate of three percent (3%) per year over the life of the Lease.

33. The Premises, as initially defined in the Torrey Pines Lease, accommodates approximately four hundred fifteen (415) students comprised of seventy-five (75) kindergarten children and three hundred forty (340) non-kindergarten children. This is the maximum number of students that can occupy the Premises because of the three rooms needed for Special Education, library and Specials (limited to 25 students per class rooms). The student mix for the Premises is important because of State funding allocations. Kindergarten students are funded by the State at a reduced DSA rate of approximately \$3,903.00 per child, per year. Non-kindergarten students are funded by the State at a DSA rate of approximately \$6,505.00 per student.<sup>7</sup>

34. The customary percentage of rent charged to charter schools is between 10-15% of the overall revenue generated per campus. Based on the DSA rates referenced above and the mix between kindergarten and non-kindergarten students on the Premises at Torrey Pines, the

<sup>7</sup> The DSA rate is subject to change on an annual basis depending on tax rates and other variables. The DSA rate for the 2016-2017 school year is expected to be the same or very similar to the DSA rate for the 2015-16 school year. Kindergarten funding is 60% of regular student funding.

1 annual revenue generated from DSA payments for students on the Premises is approximately  
2 \$2,504,425.00.<sup>8</sup> The rental rate charged by Winsor/Tower exceeds industry rates.

3 35. In addition to the above, the Premises comprising the Torrey Pines Campus was  
4 smaller than the space desired by the School. In other words, upon information and belief, Quest  
5 never contemplated limiting the student body at the Torrey Pines Campus to only 415 students.  
6 The landlord was aware of this and, consequently, Quest and the landlord discussed and even  
7 had plans prepared to expand the Premises to accommodate additional students and a student  
8 body of approximately 815 students.

9 36. The initial phase of this expansion was supposed to be completed by January  
10 2016. In reliance on these representations, Quest entered into the Torrey Pines Lease and 1<sup>st</sup>  
11 Addendum. To-date, work on the expansion has not started. On the contrary, the landlord has  
12 now expressly stated that the landlord will not expand the campus as previously promised,  
13 thereby limiting the student population in the Premises to 415 students and requiring Quest to  
14 rely upon portable classrooms. This is simply just another effort to constructively evict Quest  
15 from the Premises.

16 37. In the short term, to accommodate a larger student body, the Torrey Pines Lease  
17 provided for the placement of temporary portable classrooms capable of increasing the student  
18 population at Torrey Pines by approximately three hundred additional students and rented to  
19 Quest at a contract rate of \$1.40 per square foot. The landlord was responsible for providing and  
20 installing the portable classrooms. The Torrey Pines Lease also provided that, in the event Quest  
21 chose to have temporary portable classrooms at the Premises, the parties would enter into a  
22 separate contract to control installation and use of the portable classrooms.

23 38. On July 16, 2015, Winsor, as assignee of Tower, entered into the 1<sup>st</sup> Addendum to  
24 Triple Net Real Estate Lease ("1<sup>st</sup> Addendum"). Pursuant to the 1<sup>st</sup> Addendum, the definition of  
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26  
27 <sup>8</sup> As a percentage of revenue and based on the typical model, monthly rent for the Premises  
28 should have ranged between \$20,870.21 per month (10% of income) to \$31,305.31 per month  
(15% of income).

Premises was expanded to include a portion of the “Future Building Sites” as outlined in 1<sup>st</sup> Addendum Exhibit “A”.

39. As set forth in the 1<sup>st</sup> Addendum, four (4) temporary portable classrooms with ADA compliant ramps were to be placed upon the Premises as defined in the original section 1.10(c) for the term of six (6) months starting August 1, 2015, at a cost of \$12,389.44 per month. The landlord represented that four portable units were only needed for a six (6) month term because another building would be completed by January 2016, thus eliminating the need for the four portable units. Upon the newly increased Premises as defined in the 1<sup>st</sup> Addendum Exhibit “A”, four (4) additional temporary portable classrooms were to be placed for the term of twelve (12) months starting August 1, 2015, at a cost of \$14,389.88 per month. Finally, upon the newly increased Premises as defined in the 1<sup>st</sup> Addendum Exhibit “A”, one temporary portable restroom was to be placed for a term of six (6) months starting August 1, 2015, at a rate of \$2,279.32 per month. In other words, Tower was at all relevant times charging Quest \$29,058.64 per month, or \$348,703.68 for a twelve (12) month period for the portables.

40. By contrast, the actual lease arrangement between Tower and the owner of the portable units, Williams Scotsman (“Scotsman”) for the portable units is vastly different than the terms of the 1<sup>st</sup> Addendum.<sup>9</sup> The written lease agreement between Tower and Scotsman provides for total charges to Tower for the portable classrooms for a twelve-month period of \$131,203.20 and the total charges for the portable restroom for a twelve-month period of \$20,351.54 for a total charge of \$151,554.74. This equates to \$12,629.56 per month.

41. Upon information and belief, the amount actually charged to the landlord by Scotsman is even lower than the amount referenced in the revised lease. Upon information and belief, the landlord pays Scotsman only \$7,106.00 per month for all of the portable units, or \$85,272.00 for a twelve-month period.<sup>10</sup>

<sup>9</sup> There are a total of three executed lease agreements for the portable units with Scotsman. The first two lease agreements identified Quest as the lessee and were signed by Winsor as the purported owner of Quest. Winsor never held a representative position with Quest.

<sup>10</sup> Upon information and belief, notwithstanding the contractual obligation of Tower to provide and install the temporary portable classrooms that Scotsman contends that there are outstanding

42. In other words, the landlord is charging Quest approximately \$263,431.68 more over a twelve (12) month period for the portable units than the landlord is paying Scotsman. The portables have become a cash cow for the landlord at the expense of Quest and the students it serves.

### **IMPORTANCE OF TORREY PINES LEASE**

43. The Torrey Pines Campus is the most important of all of the Quest campuses for a number of reasons. **First**, the student body at the Torrey Pines Campus is the largest of all the campuses. There are presently, approximately 715 students enrolled for the 2016-17 school year. The enrollment at the Alexander Campus is only 60 students and the enrollment at the Bridger Campus is only 144.

44. **Second**, the entire Seventh grade class was moved from the Roberson Campus in January 2016 to the Torrey Pines Campus because of the requirements of a Special Use Permit pursuant to which Quest was operating at the Roberson Campus. Pursuant to the Special Use Permit, Quest was required to reduce the student population at the Roberson Campus from 435 students to no more than 215 students by the second semester of the 2015-16 school year. Quest satisfied this requirement by moving the Seventh grade class from the Roberson Campus to the Torrey Pines Campus.

45. **Third**, as mentioned above, the Receiver was essentially forced to close the Roberson Campus in June due to pressure from Dynamic, the landlord, to make way for a new tenant, David O. McKay Academy ("McKay Academy"); reduced enrollment; and dire prospects of renewing the Special Use Permit, which was set to expire by its own terms in July 2016, unless extended. Mayor Pro Tem Ross was adamantly opposed to Quest operating at the Roberson Campus in large part due to perceived misrepresentations by Winsor in obtaining the Special Use Permit in the first place.

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(continued)

set-up charges of approximately \$67,484.07 The Receiver requested support from Scotsman for this expense.

**DISCUSSIONS WITH TOWER REGARDING TORREY PINES CAMPUS**

46. Shortly after being appointed Receiver for Quest, the Receiver was contacted by Attorney Fred Waid regarding lease payments under the Torrey Pines Lease and 1<sup>st</sup> Addendum. Over the past many months the Receiver made it very clear to Mr. Waid that the lease rates were above market for a charter school, discussed the range and parameters of typical rent paid by charter schools of between 10-15% of the revenue generated per campus, expressed a willingness to pay the actual costs for the portable units, and the importance of a long term arrangement to create stability for Quest ranging from either reduced rental rates until build-out of the promised additional buildings, or purchase of the property by Quest.

47. Regarding offers to purchase, Mr. Waid initially stated that the landlord was not rejecting the Receiver's offers out of hand, but continually directed the discussion toward some payment toward rental arrears, payment of actual costs for the portable units and proposals for rental rates going forward. During these discussions, the Receiver was constantly told that Winsor did not have a personal ownership interest in the Torrey Pines Campus and that Mr. Waid had to discuss matters with the "investors". It appears these statements were false, as Winsor is identified as the landlord in the 1<sup>st</sup> Addendum. The Receiver made several proposals to continue leasing the Torrey Pines Campus, with each offer consisting of reduced rental rates until the additional buildings were constructed and payment of the actual costs of the portable units. While the concept of making a payment toward arrears was discussed, no figures were presented.

48. The last face-to-face meeting with Mr. Waid occurred in Las Vegas on the morning of June 23, 2016, just one day before a public meeting before the SPCSA where the Receiver was to present a status update regarding the receivership. This meeting lasted for approximately 2 ½ hours. Much of this meeting was spent by Mr. Waid in another room talking with the "investors". At the meeting the Receiver submitted yet another purchase and rent proposal reiterating essentially the same concerns that had been expressed by the Receiver many times before: Quest preferred to purchase the property, but if that was not possible, Quest needed long term stability including the build-out of the promised additional space to replace the

1 temporary portable units. Quest was willing to pay increased rent at industry standards as the  
2 new space came on line. Again, the meeting ended without an agreement between the parties  
3 with one notable exception: Mr. Waid told the Receiver twice that the Receiver could report to  
4 the SPCSA at the upcoming public meeting that notwithstanding the lack of express terms  
5 between the parties, Quest would be allowed to remain at the Torrey Pines Campus for at least  
6 the 2016-17 school year. Mr. Waid also agreed to further discuss the Receiver's proposal with  
7 his client.

8 49. The following morning, on Friday, June 24, 2016, consistent with Mr. Waid's  
9 statements and encouragement, the Receiver did in fact report to the SPCSA that the landlord  
10 was permitting Quest to remain at the Torrey Pines Campus for the 2016-17 school year.

11 50. It is important to understand that over the extended period of time the Receiver  
12 and his counsel has been meeting, conversing or communicating with Mr. Waid, at no time had  
13 Tower/Winsor threatened to evict Quest from the Torrey Pines Campus.

14 **ABRUPT CHANGE IN POSITION BY TOWER**

15 51. Tower/Winsor's tone toward the Receiver and the Torrey Pines Lease as  
16 communicated through Mr. Waid abruptly changed after a meeting on June 28, 2016 with Mayor  
17 Pro Tem Ross, Mr. Waid, representatives of McKay Academy, and the Receiver's counsel. The  
18 meeting was scheduled at the request of Mr. Waid to discuss Quest's pending application to  
19 extend the Special Use Permit for the Roberson Campus and assignment of the Dynamic Lease  
20 for the Roberson Campus to the McKay Academy. Upon information and belief, at this meeting  
21 Mayor Pro Tem Ross stated in no uncertain terms that he would not approve the application to  
22 extend the Special Use Permit to permit any school to operate at the Roberson Campus site.  
23 Mayor Pro Tem Ross was emotional about this issue as he felt that Winsor had lied to him in  
24 order to obtain the Special Use Permit in the first place. The only possible exception to this  
25 position would be if the commercial tenants who had continuously opposed Quest would agree to  
26 the McKay Academy operating out of the Roberson Campus location and that any such  
27 occupation would absolutely be limited to one year.

28 ///

1           52.     Upon information and belief, within an hour of the conclusion of the meeting with  
2 Mayor Pro tem Ross, Tower/Winsor visited the Torrey Pines Campus with representatives of the  
3 McKay Academy to tour the site as an alternative location to the Roberson Campus.

4           53.     In the morning of July 7, 2016, less than one week after the meeting with Mayor  
5 Pro Tem Ross regarding the Roberson Campus and less than one week after Tower/Winsor gave  
6 McKay Academy representatives a tour of the Torrey Pines Campus, Mr. Waid informed the  
7 Receiver that the landlord had rejected the latest offer and that Quest must immediately vacate  
8 the Torrey Pines Campus and requested that the Receiver execute a lease termination/settlement  
9 agreement similar to the agreement entered into between Dynamic and Quest relative to the  
10 Roberson Campus.

11           54.     This response was completely unexpected and extremely distressing especially  
12 coming on the heels of Mr. Waid's statements on behalf of the landlord the prior week that Quest  
13 could operate out of the Torrey Pines Campus for the 2016-17 school year and to so inform the  
14 SPCSA at the public meeting. It was also distressing because of the late date of the demand. It  
15 was literally impossible to locate, much less move the entire Torrey Pines Campus to another  
16 location by the start of the 2016-17 school year this late in the year. Teachers, staff and  
17 administrators reported to work for the 2016-17 school year on August 8, 2016. Winsor/Tower  
18 clearly understood the situation and the implications of the demand that Quest immediately  
19 vacate the Torrey Pines Campus.

20           55.     On Monday, July 11, 2016, the Receiver, through counsel, reiterated the  
21 importance of the Torrey Pines Campus to the operations and future of Quest and extended a  
22 proposal to cure arrears and make lease payments going forward. This proposal was submitted  
23 in the context and furtherance of the prior meeting with Mr. Waid wherein he stated that Quest  
24 could occupy the Torrey Pines Campus for the 2016-17 school year, but needed to pay  
25 something toward arrears and some rent going forward.

26           56.     The Receiver advised Mr. Waid that according to his calculations through July  
27 2016, the arrears asserted by Tower/Winsor under the Torrey Pines Lease were \$557,597.97,  
28

1 consisting of \$280,000.00 in rental arrears, \$232,469.12 in portable arrears, \$53,505.64 in late  
2 charges and \$22,587.25 in accrued interest.<sup>11</sup>

3 57. The Receiver proposed paying a single payment of \$300,531.00 toward arrears to  
4 bring the lease current and explained how he arrived at this figure. The Receiver calculated  
5 rental arrears at a rate of \$25,044.25 per month for eight (8) months. This reduced monthly  
6 rental rate was based on a student population in the Premises (excluding students crammed into  
7 portable units) of 415 students consisting of 75 kinder kids who are funded at a reduced DSA  
8 rate of \$3,903.00 per child per year and 340 non-kinder kids who are funded at a DSA rate of  
9 \$6,505 per child per year. The Receiver further explained that 415 students is the maximum  
10 number of students that can occupy the Premises because of the three rooms needed for Special  
11 Education, library and Specials (limited to 25 students per room). The Receiver further  
12 explained that the monthly rental rate reflects 12.5% of the revenue generated from 415 students  
13 in the Premises.

14 58. Regarding the portable units, the Receiver proposed paying to Tower/Winsor the  
15 actual amount of its payment to Scotsman for the portable units, which the Receiver understood  
16 to be \$85,272.00 for a twelve-month period (consisting of \$7,106.00 per month for eight  
17 months). In addition, the Receiver expressed his understanding that Scotsman contends that  
18 there are outstanding set-up charges of \$67,484.07 (originally thought to be as high as  
19 approximately \$83,000) due and owing under the portable lease. The Receiver explained that  
20 Quest would accept responsibility to pay Scotsman the set-up fee. The Receiver backed out late  
21 charges and interest charges. The proposal reflected an immediate payment of \$357,379.00, plus  
22 the set-up fee directly to Scotsman. The Receiver also offered to cover the expenses for deferred  
23 maintenance on the Premises.

24 59. Regarding lease payments on a going-forward basis, the Receiver proposed  
25 paying monthly rent of \$25,044.25 per month, with increases to this amount tied to increases in  
26 per pupil DSA funding and build-out of additional space to accommodate students presently

27  
28 <sup>11</sup> According to the 5-Day Notice, the arrears owing to Winsor under the Torrey Pines Lease  
through July, 2016 is \$512,469.12.



1 occupying the temporary portable units, subject to improvements consistent with the original  
2 plans. Again, the Receiver is now told that notwithstanding prior promises to the Quest Board  
3 about constructing additional buildings in order to expand the Torrey Pines Campus,  
4 Tower/Winsor no longer intends to build out additional space for Quest. Although the portable  
5 classrooms are only necessary because the landlord breached its promises to expand permanent  
6 classroom facilities, the landlord has now, on the eve of the school year, directed Scotsman to  
7 remove the portable classrooms by August 31, which is additional evidence of the landlord's bad  
8 faith conduct. The Receiver further agreed to pay Scotsman directly for the portable units.

9 60. Alternatively and most importantly, the Receiver offered to place the entire  
10 amount asserted by Tower/Winsor to be in arrears immediately into escrow, with monthly rental  
11 payments deposited into escrow at current rates pending mediation/arbitration of issues regarding  
12 the lease. These issues regarding the Torrey Pines Lease include without limitation the  
13 following:

- 14 (a) Rental Rate Reduction: The rental rate charged under the Torrey Pines  
15 Lease is above market, excessive, designed to benefit Winsor/Tower at the  
16 expense of Quest and was the result of Winsor breaching fiduciary duties  
17 owing to Quest by virtue of his position on the Foundation Board as a  
18 member and Vice President;
- 19 (b) Charges for Temporary Portable Classrooms and Restroom: The Torrey  
20 Pines Lease provides for the placement of temporary portable classrooms  
21 pending construction of additional buildings to accommodate Quest  
22 expansion. The amount Winsor/Tower could charge Quest is limited by  
23 the Torrey Pines Lease to no more than \$1.40 per square foot.  
24 Notwithstanding this limitation, Winsor/Tower is charging Quest  
25 \$29,058.64 per month, or \$348,703.68 per year (approx. \$2.43 per square  
26 foot). Winsor/Tower is charging Quest a \$263,431.68 premium over a  
27 twelve (12) month period for the portable units in excess of the amount  
28 Winsor/Tower is paying Scotsman. These charges are clearly in excess of

1 the rental rate permitted under the Torrey Pines Lease and have resulted in  
2 the portables being a significant and unintended profit center for Tower.  
3 This also violates the duties owing by Winsor to Quest as a Foundation  
4 Board member and officer;

5 (c) Quest never contemplated limiting the student body at the Torrey Pines  
6 Campus to only 415 students and that Quest and Winsor/Tower discussed  
7 and even had plans prepared to expand the Premises to accommodate  
8 additional students. The additional improvements have not been  
9 constructed, yet Quest is being charged the equivalent, or more, as if the  
10 expansion was actually built out;

11 (d) Finally, Winsor/Tower is charging a late charge for every late monthly  
12 lease payment of ten percent (10%) of the overdue amount, plus fifteen  
13 percent (15%) per annum on the unpaid installments. These charges  
14 combined constitute an impermissible penalty under Nevada law.

15 61. Notwithstanding Mr. Waid's representations on behalf of landlord regarding  
16 Quest's remaining at Torrey Pines for at least the 2016-17 school year, the landlord immediately  
17 rejected this proposal in its entirety, including the alternative proposal to escrow all alleged  
18 arrears and rental payments going forward pending resolution of issues concerning the Torrey  
19 Pines Lease, and again demanded that Quest immediately vacate the Torrey Pines Campus.

20 62. The Receiver is informed and believes that the real reason the landlord breached  
21 its agreement to let Quest remain at the Torrey Pines Campus at least for the 2016-17 school year  
22 and is demanding that Quest immediately vacate the premises is because the landlord has an  
23 agreement in principal to lease the Torrey Pines Campus to the McKay Academy. In fact, a  
24 McKay Academy vehicle has recently been seen driving around the Torrey Pines Campus.

25 63. Upon information and belief, a representative of the McKay Academy had  
26 contacted the SPCSA approximately four (4) to six (6) weeks ago inquiring about taking over  
27 and operating Quest so long as it did not need to deal with historical debt or financial issues;  
28 McKay Academy has been soliciting students for a Northwest Campus for the 2016-17 school

year, but is no longer able to occupy the Roberson Campus; and McKay Academy representatives recently toured the Torrey Pines Campus with Tower/Winsor.

64. If Quest is evicted from the Torrey Pines Campus, it is all but certain that Quest will be forced to cease all school operations. It is impossible for Quest to find an alternative location at this late date for the elementary school at the Torrey Pines Campus. Faculty, staff and administrators were scheduled to report to work on August 8, 2016. If Quest is evicted, not only will the 715 students enrolled at Torrey Pines be displaced, and 71 faculty and staff members lose their jobs, but the 60 students enrolled at the Alexander Campus and the 144 students enrolled at the Bridger Campus will also be displaced as well as 9 staff and 13 faculty from those smaller campuses will lose their jobs.

#### **STAY OR ENJOIN FOUNDATION'S EVICTION EFFORTS**

65. Based upon the above, it is necessary for this Court to enjoin or stay Tower/Winsor's efforts to evict Quest until the issues referenced above are resolved.

66. In the meantime, Quest offers to deposit lease arrears into escrow and continue depositing rent on a monthly basis at the contract rate into escrow pending a resolution of the issues surrounding the Torrey Pines Lease.

#### **FIRST CLAIM FOR RELIEF**

##### **(Injunctive Relief against All Defendants)**

67. Plaintiff hereby incorporates each and every allegation contained in the previous paragraphs as though fully set forth below.

68. The rental rate charged under the Torrey Pines Lease and the 1<sup>st</sup> Addendum is above market, excessive, designed to benefit the landlord at the expense of Quest and was the result of Winsor breaching fiduciary duties owing to Quest by virtue of his position on the Foundation Board as a member and Vice President.

69. In attempting to charge this rent to Quest, Winsor abused his position of trust with Quest to divert tax payer money and line his own pockets and those of the landlord to the detriment of the children of Nevada for whom the money was intended.

70. Further abusing the trust placed with him by Quest, Winsor represented that the

1 landlord would expand Premises to accommodate additional students and a student body of  
2 approximately 815 students, only to advise now that he has no intention to expand the Premises  
3 to accommodate additional students.

4 71. On multiple occasions, Winsor/Tower advised that notwithstanding the lack of an  
5 agreement between the parties, Quest would be allowed to remain at the Torrey Pines Campus  
6 for at least the 2016-17 school year. Based upon this conduct and statements, Quest did not  
7 attempt to find a replacement location for the school.

8 72. Notwithstanding the above and the wrongful conduct set forth in this Complaint,  
9 Defendants have abruptly changed their position and are now demanding that Quest be  
10 immediately evicted from the Torrey Pine Campus.

11 73. If Quest is evicted from the Torrey Pines Campus, it is all but certain that Quest  
12 will be forced to cease all school operations. It is impossible for Quest to find an alternative  
13 location at this late date. If Quest is evicted, not only will the 715 students enrolled at Torrey  
14 Pines be displaced, and 71 faculty and staff members lose their jobs, but the 60 students enrolled  
15 at the Alexander Campus and the 144 students enrolled at the Bridger Campus will also be  
16 displaced as well as 9 staff and 13 faculty from those smaller campuses will lose their jobs.

17 74. Based on the wrongful conduct of the Defendants, they should be enjoined from  
18 enforcing the Torrey Pines Lease and 1<sup>st</sup> Addendum and evicting Quest and the 715 students  
19 from the Torrey Pines Campus pending adjudication of the Complaint.

20 75. Enjoining the Defendants from enforcing the Torrey Pines Lease and 1<sup>st</sup>  
21 Addendum and evicting Quest and the 715 students from the Torrey Pines Campus pending  
22 adjudication of the Complaint, will also enable Plaintiff to conduct necessary discovery, as the  
23 Receiver's investigation of the issues surrounding the Torrey Pines Lease and 1<sup>st</sup> Addendum has  
24 been limited in significant part due to the fact that the receivership is administrative, rather than  
25 judicial. As a result, the Receiver lacks subpoena power. With the initiation of this action, the  
26 Receiver intends to immediately conduct discovery in order to obtain previously unavailable  
27 documents and information from the Defendants.

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1           76.     An injunction of Defendants' eviction efforts will also enable Plaintiff to obtain  
2 an accounting from the Defendants of all payments from Quest and the alleged related expenses  
3 incurred by Defendants related to the Torrey Pines Campus.

4           77.     At a minimum, the Defendants should be enjoined from enforcing the Torrey  
5 Pines Lease and 1<sup>st</sup> Addendum and evicting Quest and the 715 students from the Torrey Pines  
6 Campus until completion of the 2016-2017 school year.

7           78.     Absent the issuance of an injunction, Quest will be irreparably harmed as will the  
8 715 elementary school children attending the Torrey Pines Campus, as well as the faculty and  
9 staff, who will lose their jobs immediately before the start of the school year.

10          79.     The Receiver has been required to retain the services of counsel to prosecute this  
11 matter and, as such, is entitled to an award for costs and attorney fees incurred in enforcing  
12 Quest's rights.

13                               **SECOND CLAIM FOR RELIEF**

14                               **(Accounting against All Defendants)**

15          80.     Plaintiff repeats and realleges and by reference incorporates the allegations set  
16 forth in the previous paragraphs as if fully set forth herein.

17          81.     As of the date of this Complaint, the Defendants failed and/or refused to provide  
18 Quest an accounting of all funds the Defendants have received from Quest, including, but not  
19 limited to, an accounting to explain the discrepancy between the amounts otherwise required by  
20 the Torrey Pines Lease and 1<sup>st</sup> Addendum versus the industry rates and the rates paid by  
21 Defendants.

22          82.     Quest requests that the Defendants be ordered to provide an accounting of any  
23 and all funds Quest paid to the Defendants and an accounting to explain the discrepancy between  
24 the amounts otherwise required by the Torrey Pines Lease and 1<sup>st</sup> Addendum versus the industry  
25 rates and the rates paid by Defendants, including backup documentation and any necessary  
26 explanation.

27     ///

28     ///

83. The Receiver has been required to retain the services of counsel to prosecute this matter and, as such, is entitled to an award for costs and attorney fees incurred in enforcing Quest's rights.

**THIRD CLAIM FOR RELIEF**

**(Declaratory Relief against All Defendants)**

84. Plaintiff repeats and realleges and by reference incorporates the allegations set forth in previous paragraphs as if fully set forth herein.

85. There exists an actual controversy between Plaintiff and Defendants regarding the parties' respective rights, duties, interests and obligations under the Torrey Pines Lease and 1<sup>st</sup> Addendum, including the enforceability of the Torrey Pines Lease and 1<sup>st</sup> Addendum given the circumstances under which Quest executed the Torrey Pines Lease and 1<sup>st</sup> Addendum.

86. Plaintiff seeks a judicial determination and declaration of the parties' respective rights, duties, interests and obligations under the Torrey Pines Lease and 1<sup>st</sup> Addendum, including the enforceability of the Torrey Pines Lease and 1<sup>st</sup> Addendum given the circumstances under which Quest executed the Torrey Pines Lease and 1<sup>st</sup> Addendum.

87. A declaratory judgment is needed to clarify and settle the right, title, interest and obligations of the Parties with regard to the Torrey Pines Campus. This dispute is ripe for judicial determination and the controversy presently exists due to Defendants' threats and efforts to evict Quest and its 715 students from the Torrey Pines Campus arising under the Torrey Pines Lease and 1<sup>st</sup> Addendum.

88. Plaintiff is therefore entitled to a judicial determination regarding the right, title, interest and obligations of the Parties with regard to the Torrey Pines Campus, including the enforceability of the Torrey Pines Lease and 1<sup>st</sup> Addendum given the circumstances under which Quest executed the Torrey Pines Lease and 1<sup>st</sup> Addendum.

89. The Receiver has been required to retain the services of counsel to prosecute this matter and, as such, is entitled to an award for costs and attorney fees incurred in enforcing Quest's rights.

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**FOURTH CLAIM FOR RELIEF**

**(Breach of Fiduciary Duty/Confidential Relationship against Winsor)**

90. Plaintiff repeats and realleges and by reference incorporates the allegations set forth in the previous paragraphs as if fully set forth herein.

91. The Foundation was formed for the benefit of Quest and was contractually obligated to perform services for Quest such as renting office space, renting “other” space, including, but not limited to, classrooms and administrative rooms.

92. Winsor was a member and Vice President of the Foundation Board and, in such a position, Quest reasonably trusted and had confidence that Winsor would act in the best interests of Quest, specifically including, but not limited to, with regard to the lease of space. This relationship of trust and confidence created a fiduciary duty and/or confidential relationship owed by Winsor to Quest.

93. While sitting on the Foundation Board, Winsor was also a manager of Tower and the landlord under the Torrey Pines Lease.

94. Winsor negotiated the Torrey Pines Lease and 1<sup>st</sup> Addendum that was not in the best interests of Quest, in violation of his fiduciary duty and/or confidential relationship with Quest.

95. The rental rate charged under the Torrey Pines Lease and the 1<sup>st</sup> Addendum is above market, excessive, designed to benefit the landlord at the expense of Quest and was the result of Winsor breaching fiduciary duties owing to Quest by virtue of his position on the Foundation Board as a member and Vice President.

96. In attempting to charge this rent to Quest, Winsor abused his position of trust with Quest to divert tax payer money and line his own pockets and those of the landlord to the detriment of the children of Nevada for whom the money was intended.

97. Winsor’s actions were intentional, willful and malicious, and therefore Quest is entitled to punitive damages to punish these misdeeds.

98. As a result of the breach of fiduciary duty and/or confidential relationship owing by Winsor to Quest, Quest has been damaged in an amount in excess of \$10,000.

99. As a result of Winsor's breach of fiduciary duty, Plaintiff requests other equitable remedies that the court deems appropriate including, without limitation, reformation.

100. The Receiver has been required to retain the services of counsel to prosecute this matter and, as such, is entitled to an award for costs and attorney fees incurred in enforcing Quest's rights.

### **FIFTH CLAIM FOR RELIEF**

**(Constructive Fraud/Fraudulent Inducement against All Defendants)**

101. Plaintiff repeats and realleges and by reference incorporates the allegations set forth in the previous paragraphs as if fully set forth herein.

102. The Foundation was formed for the benefit of Quest and was contractually obligated to perform services for Quest such as renting office space, renting “other” space, including, but not limited to, classrooms and administrative rooms.

103. Winsor was a member and Vice President of the Foundation Board and, in such a position, Quest reasonably trusted and had confidence that Winsor would act in the best interests of Quest, specifically including, but not limited to, with regard to the lease of space. This relationship of trust and confidence created a fiduciary duty and/or confidential relationship owed by Winsor to Quest.

104. Winsor, individually and through Tower, breached that duty by concealing material facts from Quest, including that he was not acting in the best interests of Quest in the negotiation of the Torrey Pines Lease and 1<sup>st</sup> Amendment and the rental rate charged under the Torrey Pines Lease and the 1<sup>st</sup> Addendum is above market, excessive, designed to benefit Tower/Winsor at the expense of Quest and was the result of Winsor breaching fiduciary duties owing to Quest by virtue of his position on the Foundation Board as a member and Vice President.

105. Winsor, individually and through Tower, further breached that duty and abused the trust placed with him by Quest when Winsor represented that the landlord would expand Premises to accommodate additional students and a student body of approximately 815 students, only to advise now that the landlord has no intention to expand the Premises to accommodate



1 additional students. In reliance on these representations, Quest entered into the Torrey Pines  
2 Lease and 1<sup>st</sup> Addendum.

3 106. Defendants' actions were intentional, willful and malicious, and therefore Quest is  
4 entitled to punitive damages to punish these misdeeds.

5 107. As a result of the constructive fraud and fraud in the inducement, Quest has been  
6 damaged in an amount in excess of \$10,000.

7 108. As a result of Defendants' constructive fraud and fraud in the inducement,  
8 Plaintiff requests other equitable remedies that the court deems appropriate including, without  
9 limitation, reformation.

10 109. Plaintiff has been required to retain the services of counsel to prosecute this  
11 matter and, as such, Plaintiff is entitled to an award for costs and attorney fees incurred in  
12 enforcing Quest's rights.

13 **SIXTH CLAIM FOR RELIEF**

14 **(Tortious and Contractual Breach of the Implied**

15 **Covenant of Good Faith and Fair Dealing against All Defendants)**

16 110. Plaintiff repeats and realleges and by reference incorporates the allegations set  
17 forth in the previous paragraphs as if fully set forth herein.

18 111. Plaintiff entered into the Torrey Pines Lease and 1<sup>st</sup> Addendum with Defendants  
19 which imposed a duty on Defendants to act in good faith and engage in fair dealing in connection  
20 with the Torrey Pines Lease and 1<sup>st</sup> Addendum.

21 112. Given that Winsor, a manager of Tower and landlord under the Torrey Pines  
22 Lease, was sitting on the Foundation Board, a special element of reliance or fiduciary duty  
23 existed between the parties where Defendants were in a superior or trusted relationship.

24 113. Defendants breached that duty by performing in a manner that was unfaithful to  
25 the purpose of the contracts, including charging rent that was above market, excessive, designed  
26 to benefit Winsor/Tower at the expense of Quest and was the result of Winsor breaching  
27 fiduciary duties owing to Quest by virtue of his position on the Foundation Board as a member  
28 and Vice President. In attempting to charge this rent to Quest, Winsor abused his position of

1 trust with Quest to divert tax payer money and line his own pockets and those of the landlord to  
 2 the detriment of the children of Nevada for whom the money was intended.

3 114. Defendants further breached that duty by reneging on his representation to expand  
 4 the Premises to accommodate additional students and by threatening/attempting to evict Quest  
 5 contrary to his prior representations.

6 115. Quest's justified expectations that Defendants would act in good faith and engage  
 7 in fair dealing with regard to the Torrey Pines Lease and 1<sup>st</sup> Addendum were thus denied.

8 116. The actions of Defendants were intentional, willful and malicious, and therefore  
 9 Quest is entitled to punitive damages to punish these misdeeds.

10 117. As a result of the breach of the covenant of good faith and fair dealing by  
 11 Defendants, Quest has been damaged in an amount in excess of \$10,000.

12 118. As a result of Defendants' wrongful conduct, Plaintiff requests other equitable  
 13 remedies that the court deems appropriate including, without limitation, reformation.

14 119. The Receiver has been required to retain the services of counsel to prosecute this  
 15 matter and, as such, is entitled to an award for costs and attorney fees incurred in enforcing  
 16 Quest's rights.

### 17 **SEVENTH CLAIM FOR RELIEF**

#### 18 **(Unjust Enrichment against All Defendants)**

19 120. Plaintiff repeats and realleges and by reference incorporates the allegations set  
 20 forth in the previous paragraphs as if fully set forth herein.

21 121. By unfairly manipulating the trust and confidence that Quest had in Winsor as a  
 22 Foundation Board member, Quest paid Defendants amounts that exceeded industry rates to the  
 23 substantial prejudice of Quest.

24 122. Defendants unjustly retained this money against fundamental principles of justice  
 25 or equity and good conscience.

26 123. Winsor abused his position of trust with Quest to divert tax payer money and line  
 27 his own pockets and those of the landlord to the detriment of the children of Nevada for whom  
 28 the money was intended.

124. As a result of these actions, Quest has been damaged in an amount in excess of \$10,000.

125. The Receiver has been required to retain the services of counsel to prosecute this matter and, as such, is entitled to an award for costs and attorney fees incurred in enforcing Quest's rights.

### **EIGHTH CLAIM FOR RELIEF**

#### **(Aiding and Abetting/Civil Conspiracy/Concert of Action against All Defendants)**

126. Plaintiff repeats and realleges and by reference incorporates the allegations set forth in the previous paragraphs as if fully set forth herein.

127. The rental rate charged under the Torrey Pines Lease and the 1<sup>st</sup> Addendum is above market, excessive, designed to benefit Winsor/Tower at the expense of Quest and was the result of Winsor breaching fiduciary duties owing to Quest by virtue of his position on the Foundation Board as a member and Vice President.

128. In charging this rent to Quest, Winsor abused his position of trust with Quest to divert tax payer money and line his own pockets and those of the landlord to the detriment of the children of Nevada for whom the money was intended.

129. Tower substantially assisted or encouraged Winsor's conduct in engaging in constructive fraud, fraud in the inducement, breaching his fiduciary duty and/or confidential relationship to Quest and breaching the implied covenant of good faith and fair dealing and is therefore liable to Quest for aiding and abetting Winsor's constructive fraud, fraud in the inducement, breach of fiduciary duty and/or confidential relationship and breach of the implied covenant of good faith and fair dealing.

130. Winsor substantially assisted or encouraged Tower's conduct in engaging in constructive fraud, fraud in the inducement, breaching the implied covenant of good faith and fair dealing to Quest and is therefore liable to Quest for aiding and abetting Tower's constructive fraud, fraud in the inducement and breach of the implied covenant of good faith and fair dealing.

131. Defendants, by acting in concert, intended to accomplish an unlawful objective – including constructive fraud, fraud in the inducement, breach of fiduciary duty and/or

1 confidential relationship and breach of the implied covenant of good faith and fair dealing in the  
2 negotiation and enforcement of the Torrey Pines Lease and 1<sup>st</sup> Addendum – for the purpose of  
3 harming Quest and the students it serves.

4 132. Defendants acted together to commit constructive fraud, fraud in the inducement,  
5 breach of fiduciary duty and/or confidential relationship and breach of the implied covenant of  
6 good faith and fair dealing, while acting in concert pursuant to a common design, including  
7 without limitation charging Quest rental rates in the Torrey Pines Lease and 1<sup>st</sup> Addendum that  
8 exceed industry rates to the substantial prejudice of Quest and threatening/attempting to evict  
9 Quest contrary to their prior representations.

10 133. The actions of Defendants were intentional, willful and malicious, and therefore  
11 Quest is entitled to punitive damages to punish these misdeeds.

12 134. As a result of these actions of Defendants, Quest has been damaged in an amount  
13 in excess of \$10,000.

14 135. As a result of Defendants' misconduct, Plaintiff requests other equitable remedies  
15 that the court deems appropriate including, without limitation, reformation.

16 136. The Receiver has been required to retain the services of counsel to prosecute this  
17 matter and, as such, Plaintiff is entitled to an award for costs and attorney fees incurred in  
18 enforcing Quest's rights.

### 19 **NINTH CLAIM FOR RELIEF**

#### 20 **(Equitable Estoppel against All Defendants)**

21 137. Plaintiff repeats and realleges and by reference incorporates the allegations set  
22 forth in the previous paragraphs as if fully set forth herein.

23 138. Tower and Winsor were apprised of the true facts with regard to the negotiations  
24 and enforcement of the Torrey Pines Lease and 1<sup>st</sup> Addendum.

25 139. During the negotiations of the Torrey Pines Lease and 1<sup>st</sup> Addendum, Tower and  
26 Winsor knew that Quest was relying upon Winsor to act in the best interest of Quest and did not  
27 advise Quest to the contrary.

28 140. Quest, ignorant of the fact that Winsor was not acting in the best interest of Quest,

1 and ignorant of the fact that the landlord did not intend to expand the campus as promised,  
2 entered into the Torrey Pines Lease and 1<sup>st</sup> Addendum. The rental rate charged under the Torrey  
3 Pines Lease and the 1<sup>st</sup> Addendum is above market, excessive, designed to benefit Winsor at the  
4 expense of Quest and was the result of Winsor breaching fiduciary duties owing to Quest by  
5 virtue of his position on the Foundation Board as a member and Vice President.

6 141. During the negotiations to resolve the disputes with regard to the Torrey Pines  
7 Lease and 1<sup>st</sup> Addendum, Tower and Winsor never threatened to evict Quest from the Torrey  
8 Pines Campus and, in fact, stated on multiple occasions that the Receiver could report to the  
9 Authority that notwithstanding the lack of an agreement between the parties, Quest would be  
10 allowed to remain at the Torrey Pines Campus for at least the 2016-17 school year.

11 142. Quest, ignorant of the fact that Tower and Winsor actually intended to proceed  
12 with an eviction, relied upon Tower's and Winsor's conduct and statements by reporting to the  
13 Authority that notwithstanding the lack of an agreement between the parties regarding payment  
14 towards arrears and future rent payments, Quest would be allowed to remain at the Torrey Pines  
15 Campus for at least the 2016-17 school year and by not seeking a replacement location.

16 143. Tower and Winsor intended that their conduct, statements and silence (through  
17 Winsor or counsel) be relied upon and believed by Quest. Quest relied upon the conduct,  
18 statements and silence (through Winsor or counsel) of Tower and Winsor to its detriment.

19 144. Therefore, Tower and Winsor must be prevented from asserting legal rights with  
20 regard to the Torrey Pines Lease and 1<sup>st</sup> Addendum that, in equity and good conscience, they  
21 should not be allowed to assert because of their own conduct. Specifically, Tower and Winsor  
22 should not be permitted to enforce the payment obligations of the Torrey Pines Lease and 1<sup>st</sup>  
23 Addendum to the extent they exceed industry rates. Likewise, Tower and Winsor should not be  
24 permitted to evict Quest from the Torrey Pines Campus for the 2016-17 school year.

25 145. Plaintiff has been required to retain the services of counsel to prosecute this  
26 matter and, as such, Plaintiff is entitled to an award for costs and attorney fees incurred in  
27 enforcing Quest's rights.

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**DEMAND**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. An injunction preventing the Defendants from enforcing the Torrey Pines Lease and 1<sup>st</sup> Addendum and evicting Quest and the 715 students from the Torrey Pines Campus pending adjudication of the Complaint;

2. An accounting of any and all funds Quest paid to the Defendants and an accounting to explain the discrepancy between the amounts otherwise required by the Torrey Pines Lease and 1<sup>st</sup> Addendum versus the industry rates and the rates paid by Defendants, including backup documentation and any necessary explanation;

3. An order equitably estopping Defendants from enforcing the payment obligations of the Torrey Pines Lease and 1<sup>st</sup> Addendum to the extent they exceed industry rates;

4. An order equitably estopping Defendants from evicting Quest from the Torrey Pines Campus for the 2016-17 school year;

5. Damages in an amount in excess of \$10,000;

6. Punitive damages for the intentional, willful and malicious conduct of Defendants;

7. Any other equitable remedies that the court deems appropriate including, without limitation, reformation;

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Dated this 10<sup>th</sup> day of August, 2016.

**HOLLEY DRIGGS WALCH  
FINE WRAY PUZEY & THOMPSON**



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appointed Receiver, Joshua M. Kern*